

REMARKS

The Office Action of January 29, 2008 presents the examination of claims 16-25, 27, 29, 31 and 32. Claims 16, 24 and 27 are amended and claims 25 and 29 are presently canceled.

Claims 16-24, 27, 31 and 32 remain pending.

Rejection under 35 USC § 112, second paragraph

Claims 16, 22, 24, 25, 27, 29 and 32 are rejected under 35 USC § 112, second paragraph as being indefinite in the recitation of the phrase “a weak offensive taste and odor characteristic of yeast.” This phrase has been removed from the claims, thus obviating this rejection.

Rejection under 35 USC § 112, first paragraph

Claims 20 and 23-24 are rejected under 35 USC § 112, first paragraph, for lack of enablement. The Examiner asserts that the deposit under the Budapest Treaty is not sufficient guaranty of access of the deposited strain FERM BP-8081 upon grant of a patent.

The required Declaration assuring access without restriction to the strain FERM BP-8081 once a U.S. Patent is granted is attached here.

Claims 16-19, 21, 22, 31 and 32 are rejected under 35 USC § 112, first paragraph for alleged lack of written description support in the specification for the term “expand” in the claims. It is not necessary for the term “expand” to be present in the specification to support use of that term in the claims.

Applicants stand by their arguments previously that the Applicant had possession of an invention of a yeast strain that has adequate fermentative power to “expand” a bread dough. The Examiner is reminded that verbatim support for claim terms is not required of U.S. patent specifications. One of ordinary skill in the art has clear evidence that a dough of the invention can be “expanded” using a yeast strain of the invention; see *e.g.*, the description at page 18 of the specification.

Only to placate the Examiner, the Applicants now replace the phrase “sufficient fermentability to expand [a dough]” with the numerical data for fermentability set forth at the bottom of page 18 of the specification.

Rejection over prior art

Claims 16-19, 21, 22, 25, 27, 29, 31 and 32 are rejected under 35 USC § 102(b) as being anticipated by Nakagawa (1994). This rejection is respectfully traversed. Reconsideration and withdrawal thereof are requested.

Nakagawa discloses yeast strains that are freeze-tolerant and capable of raising both sweet and lean doughs. However, the present invention relates to yeast strains that have these characteristics and also have an isobutyric acid content below 150 ppm of the dry weight of the cells. Nakagawa et al. are silent about this property of their yeast strains.

The Examiner completely ignores this element of the present claims. His rationale that the isobutyric acid content of the yeast is irrelevant because the specification indicates that isobutyric acid “may” be a cause of an offensive taste and odor, instead of stating that such is the cause of every such offensive taste and odor, is not sufficient. A numerical value for a maximal amount of isobutyric acid in the yeast that is recited in the claims cannot be ignored by the Examiner, regardless of whether the advantage conferred by such a characteristic of the invention might also be conferred by some other property of some other invention.

Furthermore, Nakagawa et al. are silent about the isobutyric acid content of their yeast, and such a low isobutyric acid content is manifestly not an inherent property of yeast that can raise both sweet and lean doughs. The Examiner need only review the data in Table 3 at page 16 and Table 6 on page 18 of the specification to see that the isobutyric acid content of commercial baking yeasts varies widely despite having the former characteristic. (Compare data for FT-4 of the invention and the yeast of “Company C” for example.)

The present invention is in no way anticipated by Nakagawa et al. (1994), and so the instant rejection should be withdrawn.

Applicants submit that the presently-claimed invention is well-described, fully enabled and patentable over the prior art of record. Accordingly, the favorable actions of withdrawal of the standing rejections and allowance of the pending claims are respectfully requested.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37.C.F.R. §§1.16 or 1.14; particularly, extension of time fees.

Dated: December 8, 2008

Respectfully submitted,

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